

1700 Bank One Center
910 Travis Street
Houston, Texas 77002-5895
DALLAS HOUSTON AUSTIN
MEXICO CITY

**WINSTEAD
SECHREST
& MINICK**
A Professional Corporation
Attorneys & Counselors

(713) 650-8400
Telecopier (713) 951-3800

Direct Dial 650-2749
@winstead.com

December 20, 1996

RECORDATION NO. 20419 FILED 1225
DEC 24 1996 -11 15 AM

RECEIVED
SURFACE TRANSPORTATION
BOARD
DEC 24 11 12 AM '96

VIA FEDERAL EXPRESS

Surface Transportation Board
Attn: Recordation
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

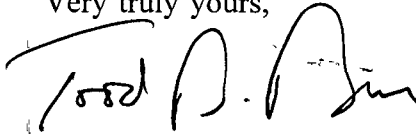
Re: Loan Agreement between NationsBank of Texas, N.A. (the "Lender") and
Brownsville & Rio Grande International Railroad (the "Borrower")

Dear Sir:

Enclosed for filing is the Security Agreement and Mortgage and one certified copy as required by ICC Rules. Also enclosed is our firm check in the amount of \$22.00 to cover the filing fees.

Should you have any questions, please do not hesitate to call.

Very truly yours,


Todd B. Brewer

TBB/tjb
Enclosure

HO963470138
122096 v2
249 9766-376

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20425-0001

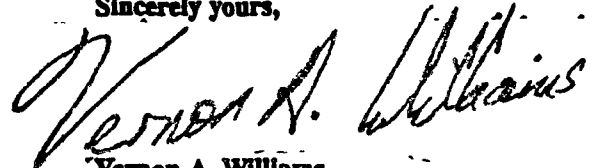
12/24/96

Todd B. Brewer
Winstead Sechrest & Minick
1700 Bank One Center
910 Travis Street
Houston, Texas 77002-5895

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/24/96 at 11:15AM, and assigned recordation number(s). 20419.

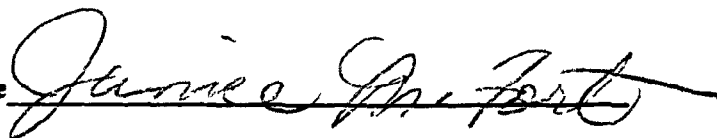
Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 22.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



STATE OF TEXAS §

COUNTY OF HARRIS §

I, TERESA BYERLY, Notary Public, hereby certify that foregoing instrument is a true and correct copy of the original Loan Agreement between NationsBank of Texas, National Association and Brownsville & Rio Grande International Railroad, dated October 16, 1996.

Executed on December 20, 1996



TERESA BYERLY
COMMISSION EXPIRES
09-08-2000


Teresa Byerly

HO963470143
122096 v2
249 9766-376

RECORDATION NO 20419 FILED 1427
DEC 2nd 1996 - 11 15 AM

LOAN AGREEMENT

between

NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION

and

BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD

Dated October 16, 1996

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS AND RULES OF CONSTRUCTION 1
Section 1 1	Definitions 1
Section 1 2	Interpretative Matters 3
Section 1 3	Accounting Principles 3
ARTICLE II	THE LOAN, REPAYMENT OF THE LOAN 3
Section 2 1	The Loans and Commitment 3
Section 2 2	Interest Rate 3
Section 2 3	Computation 4
Section 2 4	Conditions to Closing 4
Section 2 5	Note Payments 5
Section 2 6	Note Payments Due on Business Days 5
Section 2 7	Prepayment of Note 5
Section 2 8	Limited Obligations 5
ARTICLE III	SPECIAL AGREEMENTS 5
Section 3 1	Obligations of Borrower Unconditional 5
Section 3 2	Agreement as Security Agreement 5
Section 3 3	Financial Statements and Reports 6
Section 3 4	No Pledge or Sale of Assets, Contingent Liabilities 6
Section 3 5	Existence and Compliance 6
Section 3 6	Accounting and Inspection 6
Section 3 7	Insurance 6
Section 3 8	No Merger 6
Section 3 9	Permitted Investments 7
Section 3 10	Expenses 7
ARTICLE IV	REPRESENTATIONS 7
Section 4 1	Representations and Warranties of Bank 7
Section 4 2	Representations by the Borrower 7
Section 4 3	Tax Matters 8
ARTICLE V	REMEDIES SECTION 9
Section 5 1	Remedies Available 9
Section 5 2	Application of Money Collected 9
Section 5 3	Restoration of Rights 9
Section 5 4	Non-Exclusive Remedies 9
Section 5 5	Delays 10
Section 5 6	Limitation on Waivers 10
ARTICLE VI	DISCHARGE 10
Section 6 1	Discharge by Payment 10
ARTICLE VII	MODIFICATION OF DOCUMENTS 10
Section 7 1	Amendments Require Consent of Bank 10
ARTICLE VIII	MISCELLANEOUS 10
Section 8 1	Term of Agreement 10
Section 8 2	Notices 10
Section 8 3	Binding Effect, Assignment 11
Section 8 4	Entire Agreement 11

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Section 8 5 Severability	11
Section 8 6 Counterparts	11
Section 8 7 Applicable Law	11
Section 8 8 Jurisdiction	11
Section 8 9 Arbitration	11
EXHIBIT A Form of Note	A-1
EXHIBIT B Form of Resolution	B-1
EXHIBIT C Form of General Certificate of Borrower	C-1
EXHIBIT D Form of Arbitrage Certificate	D-1
EXHIBIT E Form of Opinion of Counsel to Borrower	E-1
EXHIBIT F Form of Opinion of Counsel to Bank	F-1
EXHIBIT G Form of Compliance Certificate of Borrower	G-1
EXHIBIT H Form of Financing Statement	H-1

LOAN AGREEMENT

This **LOAN AGREEMENT** (the "*Loan Agreement*"), dated October 16, 1996, is between **NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION**, Harlingen, Texas (the "*Bank*"), and **BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD** (the "*Borrower*"), an independent board of trustees duly established and created pursuant to Section 60 118, Texas Water Code, as amended, by the Brownsville Navigation District (the "*District*")

W I T N E S S E T H:

WHEREAS, the Borrower has asked the Bank to make a loan to the Borrower for the purpose of financing the costs of the Project (hereinafter defined), as authorized by the Act, such loan to be secured by the Personal Property (hereinafter defined),

WHEREAS, the Bank is willing to make such loan to the Borrower on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits, covenants and agreements herein expressed, the Bank and the Borrower agree as follows

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions. The capitalized terms used in this Loan Agreement shall have the following respective meanings unless the context otherwise requires

Act - Chapter 60, Texas Water Code, as amended

Agreement - This Loan Agreement and any amendments thereto

Bank - NationsBank of Texas, National Association, Harlingen, Texas

Business Day - Any day, other than a Saturday, Sunday, or legal holiday, on which the offices of the Bank are not required or authorized by law or executive order to be closed

Closing - The delivery of the Note hereunder to the Bank

Closing Date - The date of the Closing.

Code - The Internal Revenue Code of 1986, as amended.

Borrower Documents - Collectively, this Agreement, the Note, the Financing Statement and the Resolution

Costs of Issuance - The costs and expenses incurred by the Borrower with respect to the authorization, execution and delivery of the Borrower Documents and all documentation related thereto.

Determination of Taxability - One of the following determinations, made in regard to Section 103 of the Code (as defined herein) to the effect that by reason of any action or inaction by the Borrower or any violation by the Borrower of any of its covenants or representations in this Agreement or any misrepresentation in any certificate furnished in connection with any Note hereunder, the interest payable on such Note is includable in the gross income of owner of such obligation (other than an owner who is a "*substantial user*" of the Equipment or "*related person*" as such terms are used in Section 147(a) of the Code). (i) a final determination, decision or decree by the Commissioner or any District Director of Internal Revenue, or by any court of competent jurisdiction, which is not subject to further review, in a proceeding in which the Borrower was afforded the opportunity to contest the issues

involving federal income tax treatment of interest on this Agreement and any Note hereunder, either directly or in the name of the owner thereof, at the Borrower's sole expense, or (ii) an opinion of a nationally recognized bond counsel furnished by the Borrower to the Bank

District - The Brownsville Navigation District

Event of Default - Unless waived in writing by the Bank, the occurrence of any of the following

- (a) the failure of the Borrower to make any of the Note Payments with five (5) Business Days of when due,
- (b) the failure of the Borrower to comply with any other covenant, condition, or agreement under this Agreement, provided that such failure continues for a period of thirty (30) days, or
- (c) bankruptcy, insolvency, appointment of a receiver for, or the failure to discharge a judgment against, the Borrower

Financing Statement - The security agreement to be filed with the Surface Transportation Board evidencing the grant of the security interest in the Pledged Security in the form of Exhibit H herein

Ground Lease - The ten (10) year surface lease between the Borrower and the District authorized pursuant to Section 60 039 of the Act, and upon which the Project is located

Interest Payment Date - The date interest payments are due on the Loan, as set forth in the Note.

Loan - The loan from the Bank to the Borrower made pursuant to this Agreement

Loan Documents - Collectively, this Agreement, the Financing Statement and the Note.

Maximum Interest Rate - The maximum rate of interest allowed under Article 717k-2, Vernon's Annotated Texas Civil Statutes, as amended, but not to exceed the "indicated rate ceiling" as defined in Chapter 1 of the Texas Credit Code from time to time in effect.

Note or Notes - The promissory note or notes of even date herewith (such promissory note, as the same may be renewed, extended, amended or otherwise modified from time to time) delivered pursuant to this Agreement in substantially the form attached hereto as Exhibit A, and any promissory note or notes executed and delivered by the Borrower in replacement thereof

Note Payments - The payments required by Section 2 3 to be made by the Borrower in payment of the principal of and interest on the Note.

Outstanding - With respect to the Note, the unpaid principal thereof and interest thereon, and, with respect to the Principal Amount, the unpaid portion thereof

Pledged Security - The three (3) locomotives owned by the Borrower more particularly described in the Financing Statement.

Prime Rate - Shall mean the variable rate of interest per annum established by the Bank from time to time as its prime rate which shall vary from time to time effective on the same day as any changes of the announced prime rate of the Bank. Such rate is set by the Bank as a general rate of interest, taking into account such factors as the Bank may deem appropriate, it being understood that many of the Bank's commercial or other loans are priced in relation to such rate, that it is not necessarily the lowest or best rate charged to any customer and that the Bank may make various commercial or other loans at rates of interest having no relationship to such rate.

Project - The loan to be made by NationsBank to the Borrower to finance the Borrower's acquisition of the Property from the Anbel Corporation of Houston on real property leased pursuant to the Ground Lease to be used a maintenance facility by the Borrower

Property - The land and improvements thereon being acquired by the Borrower from Anbel Corporation of Houston

Resolution - The resolution of the Board of Trustees of the Borrower, in the form of Exhibit B hereto, authorizing the execution and delivery of this Agreement and the Note or any additional and subsequent Notes hereunder and the pledge of the Pledged Security to the payment of the principal of and interest on the Note, and any amendments or supplements thereto

State - The State of Texas

Section 1.2 Interpretative Matters.

(a) Whenever the context requires

 (i) references in this Agreement of the singular number shall include the plural and vice versa, and

 (ii) words denoting gender shall be construed to include the masculine, feminine, and neuter

(b) The table of contents and the titles given to any article or section of this Agreement are for convenience of reference only and are not intended to modify the meaning of the article or section.

Section 1.3 Accounting Principles. Where the character or amount of any asset or liability of item of income or expense is required to be determined or other accounting computation is required to be made for the purpose of this Agreement, this shall be done in accordance with generally accepted accounting principles applied on a basis consistent with those reflected by the Financial Statements, except where such principles are inconsistent with the requirements of this Agreement

ARTICLE II

THE LOAN; REPAYMENT OF THE LOAN

Section 2.1 The Loans and Commitment. Subject to the terms and conditions set forth in this Agreement, including, without limitation, the conditions set forth in Section 2.4, and for and in consideration of the payment by the Borrower of its obligations under this Agreement and the Note and the covenants and agreements herein contained, the Bank agrees to make the following loans to the Borrower.

(a) **Term Loan** - On the Closing Date, the Bank will make a term loan to the Borrower in the amount of \$200,000.00 which shall be evidenced by the Borrower's issuance, execution and delivery of the Note dated as of the Closing Date. Interest on the Note shall be due and payable quarterly, commencing ninety (90) days from the date thereof, with subsequent quarterly installments thereafter. Principal on the Note shall be due at maturity

Section 2.2 Interest Rate. The Note shall bear interest from the date of issuance, execution and delivery thereof until maturity at the varying rate per annum equal to 80% of the Prime Rate; provided, however, in the event of a Determination of Taxability, such interest rate shall automatically increase 3.0% per annum from the date of the Note, and provided further, however, such rate shall not exceed the Maximum Interest Rate. Past due principal and interest in respect of the Note shall bear interest at a rate per annum which is 4.0% above the rate per annum set forth in the Note (but in no event to exceed the Maximum Interest Rate). Adjustments in the varying

interest rate shall be made on the same day as each change in the Prime Rate and, to the extent allowed by law, on the effective date of any change in the Maximum Interest Rate

Section 2.3 Computation. All payments of interest shall be computed on the per annum basis of a year of 360 days and for the actual number of days (including the first day but excluding the last day) elapsed unless such calculation would result in a usurious rate in excess of the Maximum Interest Rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as the case may be

Section 2.4 Conditions to Closing. Subject to the limitations of Section 2.1(a), the obligation of the Bank to make the advance or advances hereunder shall be subject to the following conditions

(a) The representations of the Borrower herein shall be true, complete and correct in all material respects on the date hereof and on and as of the Closing Date as if made on the Closing Date.

(b) At the time of Closing, the Borrower Documents shall be in full force and effect, assuming due authorization and execution by the other parties thereto, and shall not have been amended or supplemented except as may have been agreed to in writing by the Bank,

(c) At or prior to Closing, the Bank shall have received each of the following documents

(i) Agreement executed by the authorized officers of the Borrower, with such changes or amendments as may have been approved by the Bank.

(ii) The Note executed by the authorized officers of the Borrower in the form of Exhibit A attached hereto,

(iii) The Resolution duly executed or certified by the Borrower in the form of Exhibit B attached hereto;

(iv) A certificate in the form of Exhibit C attached hereto, dated the Closing Date, executed by the authorized officers of the Borrower, to the effect that (A) the representations and warranties of the Borrower contained in this Agreement are true and correct on the date hereof and on and as of the Closing Date as if made on the Closing Date, (B) the Resolution and this Agreement are in full force and effect and have not been amended or supplemented except as may have been approved in writing by the Bank; (C) the Borrower is not in default with respect to any of its outstanding obligations; and (D) no litigation is pending or, to the best of their knowledge, threatened in any court to restrain or enjoin the execution and delivery of this Agreement or the Note, or contesting or affecting the adoption and validity of the Resolution or the authorization, execution and delivery of the Borrower Documents, or contesting the powers of the Board of Trustees of the Borrower;

(v) An Arbitrage Certificate, in the form of Exhibit D attached hereto, dated the Closing Date, and executed by the authorized officers of the Borrower,

(vi) An IRS Form 8038-G in form satisfactory to the Bank and its counsel), provided, however, that the Bank shall have the responsibility to cause such IRS Form 8038-G to be filed with the Internal Revenue Service not later than the fifteenth (15th) of the second month following the end of the calendar quarter and the first date on which the aggregate draw under this Agreement exceeds the lesser of \$50,000 or five percent (5%) of the issue price,

(vii) An Opinion of Counsel to the Borrower, in the form of Exhibit E attached hereto, dated as of the Closing Date;

(viii) An Opinion of Counsel to the Bank, in the form of Exhibit F attached hereto, dated as of the Closing Date:

(ix) A Compliance Certificate, in the form of Exhibit G attached hereto, dated as of the Closing Date, and executed by the authorized officers of the Borrower.

(x) A Financing Statement in the form of Exhibit H attached hereto, and

(xi) An executed Ground Lease

Section 2.5 Note Payments. All Note Payments shall be made on the applicable payment date in immediately available funds and shall be paid to the Bank at the address provided to the Borrower pursuant to Section 9.2

Section 2.6 Note Payments Due on Business Days. If the regularly scheduled due date for a Note Payment is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date

Section 2.7 Prepayment of Note. Notwithstanding the following, the Borrower may, at its option, prepay the principal amount of the Note outstanding hereunder at any time in whole or from time to time, without penalty, provided that each prepayment shall be in a multiple of \$1,000.00 (unless the prepayment retires the entire principal amount outstanding under the Note), (i) the Borrower shall provide the Bank at least three (3) Business Days' prior notice of the aggregate principal amount to be prepaid ("*Prepayment Amount*") and the date on which the prepayment will be made ("*Prepayment Date*"); and (ii) each such prepayment shall be in the amount of 100% of the principal amount to be prepaid, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to the Bank under the Note on or before the Prepayment Date but have not been paid.

Section 2.8 Limited Obligations. The obligations of the Borrower hereunder are special limited obligations thereof and neither the Note nor any instrument related to this Agreement may give a holder a right to demand payment from any source other than the security pledged hereunder.

ARTICLE III

SPECIAL AGREEMENTS

Section 3.1 Obligations of Borrower Unconditional. (a) The obligation of the Borrower to make the payments required by Section 2.1(a) and as set forth in the Note shall be absolute and unconditional. The Borrower shall pay all such amounts without abatement, diminution or deduction (whether for taxes or otherwise) regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Borrower may have or assert against the Bank or any other person.

(b) Until such time as the Note is fully paid the Borrower

(i) will not suspend or discontinue, or permit the suspension or discontinuance of, any Note Payment,

(ii) will perform and observe all of its other agreements contained in this Agreement; and

(iii) except by full payment and retirement of the Note will not terminate this Agreement for any cause.

Section 3.2 Agreement as Security Agreement. (a) An executed copy of this Agreement shall constitute a security agreement pursuant to applicable law, with the Bank as the secured party. The lien, pledge, and security interest of the Bank in the Pledged Security created in this Agreement shall become effective immediately upon the Closing, and the same shall be continuously effective for so long as the Note is outstanding.

(b) A fully executed copy of this Agreement and the proceedings authorizing it shall be filed as a security agreement among the permanent records of the Borrower. Such records shall be open for inspection to any member of the general public and to any person proposing to do or doing business with, or asserting claims against, the Borrower, at all times during regular business hours.

(c) The provisions of this section are prescribed pursuant to the Bond Procedures Act of 1981 (Article 717k-6, as amended, Texas Civil Statutes Annotated), as amended, and other applicable laws of the State. If any other applicable law, in the opinion of counsel to the Borrower or in the opinion, reasonably exercised, of counsel to the Bank, requires any filing or other action additional to the filing pursuant to this section in order to preserve the priority of the lien, pledge, and security interest of the Bank created by this Agreement, the Borrower shall diligently make such filing or take such other action to the extent required by law to accomplish such result.

Section 3.3 Financial Statements and Reports. For so long as any amounts remain outstanding under the Note, the Borrower will promptly furnish to the Bank from time to time upon request such information regarding the business and affairs and financial condition of the Borrower as the Bank may reasonably request, and furnish to the Bank

(a) Annual Audit - within 120 days of each fiscal year end current audited financial statements including (i) a balance sheet, (ii) statement of revenues, expenses and changes in fund balances, (iii) statements of cash flow, (iv) operating fund budget analysis, and (v) appropriate notes and attachments to the financial statements

(b) Quarterly Reports - promptly after becoming available and in any event no later than 45 days after the last day of each fiscal quarter, quarterly financial statements including (i) a balance sheet, (ii) statement of revenues, expenses and changes in fund balances, and (iii) appropriate notes, schedules and attachments to the financial statements

(c) Annual Compliance Certificate - upon delivery of annual audited financial statements, an annual Compliance Certificate in the form of Exhibit G hereto.

Section 3.4 No Sale of Assets; Contingent Liabilities. During the term of the Agreement and the Note, the Borrower shall not (i) sale any assets outside the ordinary course of the Borrower's business without the prior written consent of the Bank; and (ii) within fifteen (15) days of actual knowledge shall notify the Bank in writing of actual or potential contingent liabilities in excess of \$50,000.00

Section 3.5 Existence and Compliance. During the term of the Agreement and Note, the Borrower shall maintain the existence, good standing and status as an independent board of trustees of the District and shall comply with all applicable laws, regulations and governmental requirements

Section 3.6 Accounting and Inspection. During the term of the Agreement and Note, the Borrower shall maintain a system of accounting in accordance with generally accepted accounting principles to all financial statements and reports required pursuant to Section 3.3 hereof and shall permit authorized officers of the Bank to visit and inspect the books of account or other records at such reasonable times as the Bank may desire.

Section 3.7 Insurance. During the term of the Agreement and Note, the Borrower shall maintain insurance with responsible insurance companies on such of its properties, in such amount and against such risks as is customarily maintained by similar entities, and with regard to the Pledged Security in an amount to cover full replacement value and naming the Bank as a co-payee and providing for at least thirty (30) days notice to the Bank of any cancellation thereof. Satisfactory evidence of such insurance shall be provided to the Bank prior to the Closing Date and thirty (30) days prior to each policy renewal.

Section 3.8 No Merger. During the term of the Agreement and Note, the Borrower shall not consolidate with or merge into any other entity unless such entity expressly assumes the due and punctual payment of the amounts which may become due hereunder and the performance of every covenant of this Agreement on the part of the Borrower to be performed or observed.

Section 3.9 **Permitted Investments.** During the term of the Agreement and Note, the Borrower shall restrict its investments to U S Government obligations, bank certificates of deposit and other investments specifically permitted by the Public Funds Investment Act

Section 3.10 **Expenses.** The Borrower shall be obligated to pay all legal and recording expenses of the Bank associated with this Agreement, and the expenses of any other professionals as the Bank may require in connection therewith

ARTICLE IV

REPRESENTATIONS

Section 4.1 **Representations and Warranties of Bank.** The Bank represents and warrants to the Borrower the following

(a) The Bank is a national banking association duly organized and existing under the banking laws of the United States of America, and has all necessary power and authority to enter into and perform this Agreement

(b) The Bank has taken all actions required to authorize and execute this Agreement and to perform its obligations hereunder and the execution, delivery and performance by the Bank of and compliance with the provisions of this Agreement will not conflict with any existing law, regulation, rule, decree or order or any agreement or other instrument by which the Bank is bound.

Section 4.2 **Representations by the Borrower.** The Borrower represents, warrants and covenants to the Bank as follows:

(a) The Borrower is an independent board of trustees established and created by the District pursuant to Section 60 118 of the Act, and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder

(b) The Borrower has all requisite power, authority and legal right to execute and deliver the Loan Documents and all other instruments and documents to be executed and delivered by the Borrower pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Loan Documents. All corporate action on the part of the Borrower which is required for the execution, delivery, performance and observance by the Borrower of the Loan Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Borrower do not contravene applicable law or any contractual restriction binding on or affecting the Borrower

(c) The Borrower has duly approved the borrowing of funds from the Bank, no other authorization or approval or other action by, and no notice to or filing with any governmental authority or regulatory body is required as a condition to the performance by the Borrower of its obligations under any of the Loan Documents

(d) This Agreement and the Note are legally valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

(e) There is no default of the Borrower in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Loan Documents or the ability of the Borrower to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default

(f) There is no pending or, to the knowledge of the undersigned officers of the Borrower, threatened action or proceeding before any court, governmental agency or department or arbitrator (i) to restrain or enjoin the execution or delivery of this Agreement and the Note or the pledge of the Pledged Security to pay the Note, (ii) in any way contesting or affecting the authority for the execution and delivery or the validity of the Loan Documents, or (iii) in any way contesting the existence of the Borrower or the title or powers of the officers of the Borrower.

(g) In connection with the authorization, execution and delivery of this Agreement and the Note, the Borrower has complied with all provisions of the laws of the State, including the Act

(h) The execution and delivery of the documents contemplated hereunder do not violate any provision of any instrument or agreement to which the Borrower is a party or by which it is bound

Section 4.3 Tax Matters.

(a) The Borrower is a duly organized and validly existing body corporate and politic and a political subdivision or agency thereof within the meaning of Section 103 of the Code, and it is the intention of the Borrower that the interest on the Note be and remain excludable from gross income for purposes of federal income taxation

(b) The Borrower covenants that, with respect to the Code, it will not intentionally perform any act that shall have the effect of terminating such exclusion from gross income of the interest on the Note for federal income tax purposes.

(c) For purposes of Section 148(f) of the Code, which exempts obligations of certain "*small governmental units*" from the arbitrage rebate requirements of the Code, the Borrower hereby declares that (i) the Borrower is a political subdivision of the State, and is not a subordinate entity of any other political subdivision or other governmental unit of the State, (ii) the Agreement will not at any time be a "*private activity bond*", (iii) ninety-five percent (95%) or more of the net proceeds under this Agreement will be used for local governmental activities of Borrower as described in Section 148(f) of the Code; and (iv) anything in this Agreement to the contrary notwithstanding, including, without limitation, the provisions of subsection (c) of this Section, the aggregate face amount of all tax-exempt obligations, not including obligations that, when issued, are and are intended to be "*private activity bonds*," that are reasonably expected (based on the Borrower's prior experience and all other relevant factors) to be issued by the Borrower and all subordinate entities thereof during the calendar year in which this Agreement is dated will not exceed \$5,000,000 00. Neither the Borrower nor any subordinate entity thereof will issue any tax-exempt obligations during the calendar year in which this Agreement is dated that, when added to the face amount of all other tax-exempt obligations so issued in such year (not including "*private activity bonds*" as described in clause "ii" above) will be in excess of \$5,000,000 00 unless, prior to such issuance; the Borrower, for itself and on behalf of its subordinate entity, if appropriate, shall have obtained an opinion of legal counsel acceptable to and for the benefit of the Bank, with nationally recognized standing in matters pertaining to tax-exempt obligations, to the effect that such issuance will not result in the Borrower being ineligible for the arbitrage rebate exemption described above

(d) The Borrower has not issued, and reasonably anticipates that it and its subordinate entities, if any, will not issue, tax-exempt obligations (including this Agreement) in the amount of more than \$10,000,000 during the current calendar year, and hereby designates this Agreement as a "*qualified tax-exempt obligation*" within the meaning of Section 265(b)(3) of the Code, and agrees that it and its subordinate entities, if any, will not designate more than \$10,000,000 of their obligations as "*qualified tax-exempt obligations*" during the current calendar year.

(e) The weighted average maturity (defined in accordance with the Code) of any property acquired with proceeds of the Loan will not exceed one hundred twenty percent (120%) of the weighted average reasonably expected economic life in the hands of the Borrower of the property financed thereby

(f) The Borrower will not use the proceeds of the Loan to reimburse expenditures previously paid by the Borrower, except in compliance with the requirements of Treas. Reg. 1.103-18.

(g) The Borrower will assure that the proceeds of the Loan are not so used as to cause this Agreement to satisfy the private loan financing test of Section 141(c) of the Code

(h) The Borrower will not take or permit or suffer to be taken any action to be taken if the result of the same would be to cause this Agreement to be "*federally guaranteed*" within the meaning of Section 149(b) of the Code

(i) The Borrower will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Loan which, if such action had reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of this Agreement would have caused this Agreement to be an "*arbitrage bond*" within the meaning of Section 148 of the Code.

(j) The Borrower shall cause to be executed and delivered in connection herewith an applicable IRS Form 8038-G in the form and satisfactory to the Bank and its counsel, provided, however, that the Bank shall have the sole responsibility to cause such IRS Form 8038-G (or, if applicable, IRS Form 8038-GC) to be filed with the Internal Revenue Service not later than the fifteenth (15th) day of the second month following the end of the calendar quarter during which this Agreement was issued,

(k) If the proceeds of the Loan have or will not have been expended as of the date thereof, the Borrower will provide certification pursuant to Treasury Regulation 1.148-2(b)(1)(ii)(A), and

(l) The representations above shall be deemed to be made on and as of the date hereof and as of the date of the Note

ARTICLE V

REMEDIES SECTION

Section 5.1 Remedies Available. (a) Upon the occurrence of any Event of Default and at any time thereafter for so long as the Event of Default has not been cured, the Bank may take any action at law or in equity to collect all amounts then due under this Agreement and the enforcing of compliance with any other obligation of the Borrower under this Agreement and the Financing Statement.

(b) In addition to the remedies provided in subsection (a) of this Section, the Bank shall, to the extent permitted by law, be entitled to recover the costs and expenses, including attorney's fees and court costs, incurred by the Bank in the proceedings authorized under subsection (a) of this Section

(c) Notwithstanding any other provision of this Agreement, the acceleration of the Note Payments is not available as a remedy under this Agreement.

Section 5.2 Application of Money Collected. Any money collected as a result of the taking of remedial action pursuant to this Article V, including money collected as a result of foreclosing the liens of this Agreement, shall be applied to cure the Event of Default with respect to which such remedial action was taken

Section 5.3 Restoration of Rights. If any action taken as a result of an Event of Default is discontinued or abandoned for any reason, or is determined adversely to the interests of the Bank, or if an Event of Default is cured, all parties shall be deemed to be restored to their respective positions and rights under the Loan Documents as if such Event of Default had not occurred.

Section 5.4 Non-Exclusive Remedies. No remedy conferred upon or reserved to the Bank by this Agreement is intended to be exclusive of any other available remedy, and each such remedy shall be in addition to any other remedy given under this Agreement or the other Loan Documents or now or hereafter existing at law or in equity

Section 5.5 **Delays.** No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or be construed to be a waiver thereof, and all such rights and powers may be exercised as often as may be deemed expedient

Section 5.6 **Limitation on Waivers.** If an Event of Default is waived, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed a waiver of any other Event of Default, provided, that no waiver of an Event of Default shall be effective unless such waiver is made in writing

ARTICLE VI

DISCHARGE

Section 6.1 **Discharge by Payment.** When the Note has been paid in full or when the Borrower has made payment to the Bank of the whole amount due or to become due under the Note (including all interest that has accrued thereon or that may accrue to the date of maturity) and all other amounts payable by the Borrower under this Agreement have been paid, the liens of this Agreement shall be discharged and released, and the Bank, upon receipt of a written request by the Borrower and the payment by the Borrower of the reasonable expenses with respect thereto, shall discharge and release the lien of this Agreement and execute and deliver to the Borrower such releases or other instruments as shall be requisite to release the lien hereof

ARTICLE VII

MODIFICATION OF DOCUMENTS

Section 7.1 **Amendments Require Consent of Bank.** The Borrower may not amend, or agree or consent to amendment of, the Borrower Documents without the prior written consent of the Bank

ARTICLE VIII

MISCELLANEOUS

Section 8.1 **Term of Agreement.** This Agreement shall become effective upon the Closing and shall continue in full force and effect until all obligations of the Borrower under this Agreement and the Note have been fully paid

Section 8.2 **Notices.** (a) All notices, certificates, or other communications required by or made pursuant to this Note Agreement shall be in writing and given by certified or registered United States Mail, return receipt requested, addressed as follows

- (i) if to the Bank.

NationsBank of Texas, National Association
222 East Van Buren
Harlingen, Texas 78578
Attention. Greg Marks

- (ii) if to the Borrower:

Brownsville & Rio Grande International Railroad
P. O. Box 3818
Brownsville, Texas 78523-3818
Attention: President

(b) The Borrower and the Bank may designate any further or different addresses to which subsequent notices shall be sent, provided, that, any of such parties shall designate only one address for such party to receive such notices

(c) Except as otherwise provided by this Agreement, any communication delivered by mail in compliance with this section is deemed to have been given as of the date of deposit in the mail

(d) A provision of this Agreement that provides for a specific method of giving notice or otherwise conflicts with this section supersedes this section to the extent of the conflict

Section 8.3 Binding Effect; Assignment. (a) This Agreement shall (i) be binding upon the Borrower, its successors and assigns, and (ii) inure to the benefit of and be enforceable by the Bank and its successors, transferees and assigns, provided that the Borrower may not assign all or any part of this Agreement without the prior written consent of the Bank. The Bank may assign, transfer or grant participations in all or any portion of this Agreement, the Note, or any of its rights or security hereunder, including without limitation, the instruments securing the Borrower's obligations under this Agreement, provided that any such assignment, transfer or grant shall be made only to a financial institution whose primary business is the lending of money

Section 8.4 Entire Agreement. The Borrower Documents contain the entire agreement between the parties, and there are no other representations, endorsements, promises, agreements, or understandings, oral or written, express or implied, between the Borrower and the Bank

Section 8.5 Severability. If any part of this Agreement is ruled invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect the remainder of this Agreement.

Section 8.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

Section 8.7 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the laws of the State and, if applicable, federal law

Section 8.8 Jurisdiction. All actions or proceedings with respect to, and the performance of, the Note and this Agreement shall be, or shall be instituted in the courts of the State of Texas, in Harlingen, Texas, and by execution and delivery of this Agreement, the Borrower and the Bank irrevocably and unconditionally submit to the jurisdiction of such courts and unconditionally waive (i) any objection each may now or hereafter have to the laying of venue in any such courts, and (ii) any claim that any action or proceeding brought in any such courts has been brought in an inconvenient forum

Section 8.9 Arbitration. ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE NOTE, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. (J.A.M.S.) AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THE AGREEMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

(A) **Special Rules.** THE ARBITRATION SHALL BE CONDUCTED IN THE CITY OF THE BORROWER'S DOMICILE AT THE TIME OF THIS AGREEMENT'S EXECUTION AND

ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR AN ADDITIONAL 60 DAYS.

(B) Reservation of Rights. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO (i) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS AGREEMENT OR THE NOTE; OR (ii) BE A WAIVER BY THE BANK OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. § 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (iii) LIMIT THE RIGHT OF THE PARTIES HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF MANDAMUS, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. THE PARTIES MAY EXERCISE SUCH SELF HELP RIGHTS OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS AGREEMENT. NEITHER THE EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their respective duly authorized officers as of the date first above written

NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION

By: Greg Marks
Name: GREG MARKS
Title: VICE PRESIDENT

BROWNSVILLE & RIO GRANDE INTERNATIONAL
RAILROAD

By: John Champion
Name: JOHN CHAMPION
Title: CHAIRMAN

ATTEST:

By: L.E. Cantu
Name: L.E. Cantu
Title: President / Chief Operating Officer

[SEAL]

HO962960163
102396 v3
249 9766-376

EXHIBIT A

Form of Note

October 16, 1996

Principal Amount
\$200,000 00

**BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD
PROMISSORY NOTE**

BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD (the "*Borrower*") for value received, hereby promises to pay on or before October 15, 1997, to the order of **NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION** or assigns, at its offices located at 222 East Van Buren, Harlingen, Texas 78578, the principal sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS

All capitalized terms which are used but not defined in this Note shall have the same meanings as in the Loan Agreement dated October 16, 1996, between the Borrower and the Bank (such Loan Agreement, together with all amendments or supplements thereto, being the "*Loan Agreement*")

In addition to the principal sum referred to in the first paragraph of this Note, the Borrower also agrees to pay interest on all amounts hereof so advanced and remaining from time to time unpaid hereon from the date hereof until maturity at a varying rate per annum which is equal to 80% of the Prime Rate, but in no event to exceed the Maximum Interest Rate. Past due principal and interest shall bear interest at a rate per annum which is two percent (4%) above the above stated rate, but in no event to exceed the Maximum Interest Rate. Adjustments in the varying interest rate shall be made on the same day as each change announced in the Prime Rate and, to the extent allowed by law, on the effective date of any change in the Maximum Interest Rate.

All accrued interest is due and shall be paid quarterly, commencing on January 15, 1997 and continuing on the same day of each successive quarter thereafter, with a final payment of all unpaid interest thereon on October 15, 1997

All payments of interest shall be computed on the per annum basis of a year of 360 days and for the actual number of days (including the first day but excluding the last day) elapsed unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as the case may be

Principal of and interest on this Note shall be payable from and secured by a pledge of the Pledged Security

This Note is authorized under the Loan Agreement and is subject to, and is executed in accordance with, all of the terms, conditions and provisions thereof. A fully executed copy of the Loan Agreement is on file in the permanent records of the Borrower and is open for inspection to any member of the general public and to any person proposing to do business with, or asserting claims against, the Borrower, at all times during regular business hours.

Except as otherwise provided in the Loan Agreement, the Borrower waives all demands for payment, presentations for payment, protests, notices of protests, and all other demands and notices, to the extent permitted by law.

All agreements between the Borrower and holder hereof, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand, prepayment, or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to the holder hereof, exceed the maximum permissible by applicable law. If, from any circumstances whatsoever, interest would otherwise be payable to the holder hereof in excess of the Maximum Interest Rate, then the interest payable to the holder hereof

shall be reduced to the maximum amount permitted under applicable law and if from any circumstances the holder hereof shall ever receive anything of value deemed interest by applicable law in excess of the Maximum Interest Rate, an amount equal to any excessive interest shall be applied to the reduction of the principal hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to the Borrower. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period of the subject loan until payment in full of the principal so that the interest hereon for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between the Borrower and the holder hereof.

THIS NOTE AND THE LOAN AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

NEITHER THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THIS NOTE, EXCEPT TO THE EXTENT THAT THE BORROWER IS OBLIGATED TO MAKE THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE.


Pursuant to the Loan Agreement, the Borrower reserves the right to prepay all or any portion of the outstanding principal amount of this Note. The Borrower shall give three (3) Business Days written notice of any such prepayment to the Bank. Such notice shall set forth the date of prepayment and, if less than all of the outstanding principal amount of this Note is to be prepaid, the amount to be prepaid and the maturity date or dates of such amount.

If a date for the payment of the principal of or interest on the Note is a Saturday, Sunday, legal holiday, or a day on which the Bank is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institution is authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Note shall be governed in all respects by the laws of the State of Texas and of the United States of America.

IN WITNESS WHEREOF, this Note has been duly executed in accordance with law as of this 16th day of October, 1996

**BROWNSVILLE & RIO GRANDE INTERNATIONAL
RAILROAD**

By 
Name JOHN CHAMPION
Title CHAIRMAN

ATTEST:

By: 

Name:

Title:

J. E. Canty
President, C.O.O.

EXHIBIT B

Form of Resolution

CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS §
COUNTY OF CAMERON §

We, the undersigned officers of said Borrower, hereby certify as follows

1 The Board of Trustees of said Borrower convened in MEETING ON October 16, 1996, at the designated meeting place, and the roll was called of the duly constituted officers and members of said Board of Trustees, to wit

_____, President
_____, Vice President
_____, Secretary and Treasurer

and all of said persons were present, except the following absentees _____,
thus constituting a quorum Whereupon, among other business, the following was transacted at said Meeting. a
written

**RESOLUTION OF THE Board of Trustees OF THE BROWNSVILLE &
RIO GRANDE INTERNATIONAL RAILROAD REGARDING A LOAN**

was duly introduced for the consideration of said Board of Trustees and read in full. It was then duly moved and seconded that said Resolution be adopted, and, after due discussion, said motion carrying with it the adoption of said Resolution, prevailed and carried by the following vote

AYES All members of the Board of Trustees shown present above voted "Aye" except as shown below

NOES

ABSTAIN

2. That a true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate, that said Resolution has been duly recorded in said Board of Trustees' minutes of said Meeting, that the above and foregoing paragraph is a true, full and correct excerpt from said Board of Trustees' minutes of said Meeting pertaining to the adoption of said Resolution, that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said Board of Trustees as indicated therein, that each of the officers and members of said Board of Trustees was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said Meeting was given, all as required by Chapter 551, Texas Government Code

3 That the President of the Board of Trustees of the ~~District~~ ^{BRG} has approved and hereby approves the
aforesaid Resolution, that the President and the Secretary of said ~~District~~ ^{BRG} have duly signed said Resolution, and that
the President and the ~~District~~ ^{BRG} Secretary of said ~~District~~ ^{BRG} hereby declare that their signing of this Certificate shall
constitute the signing of the attached and following copy of said Resolution for all purposes

SIGNED AND SEALED October 16 1996

Secretary, Board of Trustees

President, Board of Trustees

EXHIBIT C

Form of General Certificate of Borrower

We, the undersigned duly authorized officers of the Board of Trustees of the **BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD** ("*Borrower*") acting in our official capacities as such hereby certify with respect to the **LOAN AGREEMENT**, dated as of October 16, 1996. (the "*Loan Agreement*") by and between Borrower and **NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION** ("*Bank*"), as follows

1 That the Borrower is an independent board of trustees, validity created and existing under Section 60 118, Texas Water Code, as amended and the laws and the Constitution of the State of Texas and is a governmental agency thereof

2 That as of October 16, 1996, the following named persons constitute the members of the Board of Trustees of Borrower

<u>NAME</u>	<u>TITLE</u>
_____	Chairman
_____	Vice Chairman
_____	Secretary and Treasurer
_____	Trustee
_____	Trustee

3. That on October 16, 1996, the Board of Trustees of the Borrower duly adopted by a majority vote the Resolution Regarding the Loan Agreement (the "*Resolution*") authorizing and approving the entering into the Loan Agreement and the Note, at a duly called public meeting, at which a quorum was present and acting throughout, the Resolution is in full force and effect and has not been altered, amended or repealed as of the date hereof, that said meeting was duly called and open to the public in accordance with the laws of the State of Texas

4 The following described instruments (collectively, the "*Instruments*"), as executed and delivered or authorized by the Borrower, are in substantially the same form and text as copies of such Instruments which were before and were approved or ratified by the Board of Trustees of the Borrower, and which the officers of the Borrower were authorized to execute and deliver for and on behalf of the Borrower


- (a) the Loan Agreement,
- (b) the Note, dated October 16, 1996, and
- (c) all Exhibits to the Loan Agreement

5 To the best knowledge of the undersigned, on the date hereof, the Borrower is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of the Instruments

6 The representations and warranties of the Borrower contained in the Instruments are correct on and as of the date hereof as though made on and as of such date

IN WITNESS WHEREOF, we have duly executed this certificate and affixed the seal of such entity this
16th day of October, 1996

BROWNSVILLE & RIO GRANDE INTERNATIONAL
RAILROAD

By: 
Name JOHN CHAMPION
Title CHAIRMAN

ATTEST:

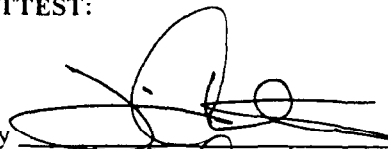

By _____
Name L. E. Cantu
Title President, C.O.O.

EXHIBIT D

Form of Arbitrage Certificate

I, the undersigned officer of the **BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD** (the "*Borrower*"), make this certification for the benefit of all persons interested in the exclusion from gross income for federal income tax purposes of the interest payments under that certain **LOAN AGREEMENT**, dated as of October 16, 1996 (the "*Agreement*"), between Borrower and **NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION** (the "*Bank*")

1. **Responsible Officer** I am the duly chosen, qualified and acting officer of the Borrower for the office shown below my signature. As such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Borrower. I am the officer of the Borrower charged, along with other officers of the Borrower, with the responsibility for issuing the Agreement.

2. **Code and Regulations** I am aware of the provisions of Sections 148, 149 and 150 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and the Treasury Regulations (the "*Regulations*") heretofore promulgated under Sections 148, 149 and 150 of the Code. This certificate is being executed and delivered pursuant to Sections 148-0 through 148-11, 149(d)(1), 149(g)-1, 150-1 and 150-2 of the Regulations.

3. **Definitions** The capitalized terms used in this certificate (unless otherwise defined) that are defined in the Agreement shall for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations shall for all purposes hereof have the meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

4. **Reasonable Expectations** The facts and estimates that are set forth in this certificate are accurate, and the expectations set forth herein are reasonable in light of such facts and estimates. The undersigned is aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of such facts, estimates or expectations.

5. **Description of Governmental Purpose and Size** The Borrower is entering into the Agreement for the purposes of funding the acquisition of the Property and the costs related to the issuance of the Agreement.

(a) The Property will be owned and operated by the Borrower and the Borrower has not contracted in any manner with any company, firm or other person or entity to operate or maintain the Property or any part thereof for and on behalf of the Borrower.

(b) There is not, and as of the date hereof, the Borrower does not anticipate entering into, any lease, contract or other understanding or arrangement, such as a take-or-pay contract or output contract, with any person other than a State or local governmental unit, pursuant to which the Borrower expects that the proceeds of the Agreement, or the Property financed therewith or any part thereof, will be used in the trade or business of such person (including all activities of such persons who are not individuals).

(c) The amounts received from the Agreement, when added to the amounts expected to be received from the investment thereof, do not exceed the amounts required to pay the costs of the Property and the costs of issuing the Agreement.

(d) No other obligations of the Borrower payable from the same source of funds were sold or delivered within fifteen (15) days from the date hereof.

6. **Amount and Use of Proceeds of the Agreement** (a) The proceeds of the Agreement are \$200,000.00 (issue price of \$200,000.00 less proceeds in the amount of \$0 used to pay costs of issuance). There is no accrued interest on the Agreement. The Borrower will pay from its own funds any other cost of issuance. No

proceeds will be used to pay, refund, retire or replace any governmental obligations previously issued. The proceeds will be used as follows:

No portion of the proceeds of the Loan Agreement will be disbursed to reimburse the Borrower for any expenditures made by the Borrower, unless (i) prior to the date that is sixty (60) days before the date hereof or the date that is sixty (60) days prior to the date the Borrower adopted or expressed its official intent to reimburse such expenditures meeting the requirements of Section 1.150-2(e)(1) of the Regulations, (ii) the expenditure is a capital expenditure, a cost of issuance of the Agreement, an extraordinary working capital item or grant, and (iii) the reimbursement is made not later than eighteen (18) months after the later of (A) the date of the expenditure or (B) the date the Property was placed into service or abandoned but not more than three (3) years after the date of expenditure.

(b) The amount of \$0 will be used to pay the costs of issuance of the Agreement.

7. **Use of Investment Proceeds** The best estimate of the Borrower is that investment proceeds resulting from the investment of any of the proceeds of the Agreement pending expenditure of such proceeds for costs of acquiring the Property will be retained in the Property Acquisition Account and used to pay or reimburse the Contract Price of the Property in addition to those described in Paragraph 6 above.

8. **No Replacement Proceeds** Borrower has not established and does not expect to establish any sinking fund, debt service fund, redemption fund, reserve fund, replacement fund or similar fund to be used to pay, directly or indirectly, principal or interest on the Agreement. Borrower has not pledged or otherwise restricted and does not expect to pledge or restrict any other funds or property which as a result of the pledge or restriction could be reasonably assured to be available to pay, directly or indirectly, principal or interest on the Agreement, even if Borrower encounters financial difficulty.

9. **Rebate** Borrower does not expect to be required to make any rebate payments to the United States pursuant to Section 148(f) of the Code because the Borrower expects that the gross proceeds of the Agreement (within the meaning of Section 148(f)(4)(B) of the Code) will be expended for the governmental purpose for which the Agreement is entered into no later than a date which is six (6) months from the date hereof. Borrower has covenanted, however, in the Agreement that in the event that Borrower should be required to make rebate payments to the United States pursuant to Section 148(f) of the Code, Borrower will make such payments as and when provided in the Agreement.

10. **Yields** There are no other obligations of the Borrower which (a) are sold at substantially the same time as the Agreement (i.e., within 15 days of the sale date of the Agreement), (b) are sold pursuant to the same plan of financing with the Agreement, and (c) are reasonably expected to be paid from substantially the same source of funds as the Agreement.

The yield on the Agreement equals the discount rate that, when used in computing the present value of all the unconditionally payable payments of principal and interest and all the fees for a qualified guarantee paid and to be paid with respect to the issue, produces an amount equal to the present value of the aggregate issue price of the Agreement. Present value is computed as of the date of issue of the Agreement.

11. **Temporary Period For Capital Projects** All of the net proceeds of the Agreement, together with the investment earnings thereon, are expected to be allocated to expenditures on a Project within three (3) years after the date of any advance pursuant to the Agreement.

Within six (6) months after the date of any advance pursuant to the Agreement, the Borrower will have incurred a substantial binding obligation to a third party to expend at least five percent (5%) of the net proceeds of such advance on a Project.

After the substantial binding obligation to commence the Project is incurred, completion of the Project and the allocation of the net proceeds of the advance pursuant to the Agreement to expenditures shall proceed with due diligence

Until the third anniversary of the date of any advance under the Agreement, all of the proceeds of such advance, and the investment thereon, will be invested without regard to the rate of investment return

12. **Yield Restriction** The Borrower will invest all amounts received from any insurance on, condemnation of, or eminent domain proceedings with respect to, any property financed with the Agreement at a yield equal to or less than the yield on the Agreement unless an opinion is received from nationally recognized bond counsel that the investment of such amounts at a higher yield will not affect the exclusion of interest on the Agreement from gross income

If unspent proceeds remain on hand after the completion of the Project, such proceeds will be invested at a yield equal to or less than the yield on the Agreement, and will be used to retire any advances outstanding on the first date that such obligations may be retired at par

13. **The Project** A reasonable estimate of the fair market value of the property on the latest maturity date of the Agreement is equal to at least 20 percent of the original cost of the property financed by the Agreement. This estimate of fair market value is determined without including in the value any additional to the property or increase or decrease for inflation or deflation during the term of the Agreement

A reasonable estimate of the remaining useful life of the property on the latest maturity date of the Agreement is the longer of one year or 20 percent of the originally estimated useful life of the property financed by the Agreement.

14. **Two-Year Spending Exception to Rebate** The Borrower may comply with the two-year spending exception to rebate under Section 148-7(e) of the Income Tax Regulations

The Borrower reasonably expects that at least 75 percent of the available construction proceeds of the issue will be for construction expenditures

The Borrower may expend the available construction proceeds for governmental purposes of the issue in accordance with the following schedule measured from the issue date

- (a) At least 10 percent within 6 months,
- (b) At least 45 percent within 12 months,
- (c) At least 75 percent within 18 months; and
- (d) 100 percent within 2 years

15. **No Artifice or Device** In connection with the issuance of the Agreement, Borrower has not (a) employed any abusive arbitrage device, or (b) over-burdened the market for tax-exempt obligations

16. **Agreement Not Hedge Bonds** Borrower expects to expend within three (3) years from the date hereof, in addition to the costs of issuance of the Agreement, an amount of proceeds of the Agreement equal to not less than 85% of the net proceeds of the Agreement. No proceeds of the Agreement have been or will be invested in nonpurpose investments which have substantially guaranteed yield for four (4) years or more

17. **Qualified Tax-Exempt Obligations** Borrower has not issued and reasonably anticipates that it and its subordinate entities, if any, will not issue, tax-exempt obligations (including this Agreement) in an amount of more than \$10,000,000 during the current calendar year, and hereby designates this Agreement as a "qualified

tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code and agrees that it and its subordinate entities, if any, will not designate more than \$10,000,000 of their obligations as "*qualified tax-exempt obligations*" during the current calendar year

18. **No-Arbitrage Certificate May be Relied Upon** Borrower has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon

19. **No Arbitrage** On the basis of the foregoing facts, estimates and circumstances, it is expected that the gross proceeds of the Agreement will not be used in a manner that would cause any obligation to be an "*arbitrage bond*" within the meaning of Section 148 of the Code and the Regulations

WITNESS MY HAND, this 16th day of October, 1996

**BROWNSVILLE & RIO GRANDE INTERNATIONAL
RAILROAD**


By. 
Name JOHN CHAMPION
Title CHAIRMAN

EXHIBIT E

Form of Opinion of Counsel to Borrower

October 16, 1996

NationsBank of Texas, N A
222 East Van Buren
Harlingen, Texas 78578

Winstead Sechrest & Minick P C
910 Travis Street, Suite 1700
Houston, Texas 77002

Gentlemen.

We have acted as counsel to the Brownsville & Rio Grande International Railroad (the "*Borrower*"), an independent board of trustees created pursuant to Section 60 118, Texas Water Code, and a validly existing political subdivision of the State of Texas in connection with a loan agreement with NationsBank of Texas, N A. (the "*Bank*") This opinion is furnished to you as required by the Loan Agreement (hereinafter defined). Capitalized terms not defined herein have the meanings given to them in the Loan Agreement.

As counsel to the Borrower, we have reviewed the following documents and instruments, all of which are dated of even date herewith unless otherwise indicated (collectively, the "*Loan Documents*")

- (i) The Loan Agreement, dated as October 16, 1996, by and between the Borrower and the Bank;
- (ii) The Note, dated as of October 16, 1996, and
- (iii) The Resolution of the Board of Trustees of the Borrower approving the Loan Agreement and the Note

For purposes of this opinion, we have assumed the genuineness of all signatures on all documents the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies; and the correctness and accuracy of all facts set forth in all certificates and reports identified in this opinion

We have been furnished with and have examined originals or copies, certified or otherwise identified to our satisfaction, of all the records, reports and certificates described above.

Our opinions are limited in all respects to the substantive law of the State of Texas, and the federal law of the United States.

Based on the foregoing and subject to the limitations set forth below, we are of the opinion that:

- (1) The Borrower, is an independent board of trustees created pursuant to Section 60 118, Texas Water Code, a body politic and corporate, and a validly existing political subdivision of the State of Texas,

- (2) The Borrower is duly authorized and empowered to create and issue the Note, and the Borrower is duly authorized and empowered to execute, deliver and perform the Loan Agreement, and all corporate action on the Borrower's part requisite for the due creation and issuance of the Note and for the due execution, delivery and performance of the Loan Agreement has been duly and effectively taken.
- (3) The Loan Agreement and the Note constitute valid and binding obligations of the Borrower, enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights),
- (4) The Borrower's execution, delivery and performance of the Note and the Loan Agreement do not require the consent or approval of any other Person, including without limitation any regulatory authority or governmental body of the United States of America or any state thereof or any political subdivision of the United States of America or any state thereof, and will not result in the breach of or violation of any other agreement to which the Borrower is a party

This opinion is rendered solely for your information and assistance in connection with the above transaction, and may not be relied upon by any other Person or for any other purpose without our prior written consent

Very truly yours,

EXHIBIT F

Form of Opinion of Counsel to Bank

_____, 1996

NationsBank of Texas, National Association
222 East Van Buren
Harlingen, Texas 78578

Brownsville & Rio Grande International Railroad
P Box 3818
Brownsville, Texas 78523-3818

Gentlemen

We have acted as counsel to **NATIONSBANK OF TEXAS, NATIONAL ASSOCIATION** (the "*Bank*") in connection with the execution and delivery by the **BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD**, an independent board of trustees created pursuant to Section 60 118, Texas Water Code, as amended (the "*Borrower*"), of the Loan Agreement, dated as October 16, 1996 (the "*Loan Agreement*"), between the Bank and the Borrower

We have examined the law and such certified proceedings, the Loan Agreement and other papers as deemed necessary to render this opinion

As to questions of fact material to our opinion we have relied upon representations of the Borrower contained in the Agreement, the certified proceedings and other certifications of public officials furnished to us, and certifications by officials of the Borrower without undertaking to verify the same by independent investigation. All capitalized terms used herein shall have the same meanings as set forth in the Loan Agreement unless the context clearly indicates otherwise.

Reference is made to an opinion of even date of Rentfro & Rentfro, counsel to the Borrower, with respect to, among other matters, the corporate existence of the Borrower, the power of the Borrower to enter into and perform the Loan Agreement, the authorization, execution and delivery of the Loan Agreement by the Borrower, and the extent to which the Loan Agreement is binding and enforceable upon the Borrower

Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows:

1 The Borrower is a duly created and validly existing body corporate and politic and a public instrumentality of the State of Texas with the power to enter into and perform the Loan Agreement and the Note.

2. The Loan Agreement has been duly authorized, executed and delivered by the Borrower and is a valid, binding and enforceable special obligation by the Borrower, secured by the pledge of the Pledged Security.

3 Under existing law, assuming the accuracy of certifications made by the Borrower and the continuing compliance by the Borrower with the requirement of federal tax laws, the interest payable under the Loan Agreement is excluded from the gross income of the Bank under the Internal Revenue Code of 1986, as amended (the "*Code*") In addition, the interest will not be treated as a preference item in calculating the alternative minimum tax imposed under the Code on individuals and corporations. However, we call your attention to the fact that the interest will be taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax and an environmental tax imposed on corporations (as defined for federal income tax

purposes) The interest payable under the Loan Agreement to certain foreign corporations may be subject to the branch profits tax imposed by the Code. Based solely upon and assuming the accuracy of the certifications of the Borrower in the Loan Agreement, the Loan Agreement is a "*qualified tax-exempt obligation*" within the meaning of Section 265(b)(3) of the Code, and in the case of certain financial institutions (within the meaning of Section 265(b)(3) of the Code), a deduction is allowed for 80 percent of that portion of such financial institutions' interest expense allocable to interest on the Loan Agreement.

The Borrower has covenanted in the Loan Agreement to take all lawful action necessary under the Code to ensure that the interest component will remain excluded from the gross income of the Bank for federal income tax purposes and to refrain from taking any action which would cause the interest component to become included in such gross income. Failure to comply with federal tax requirements could cause the interest component to be included in gross income for federal tax purposes retroactive to issuance of the Loan Agreement.

We express no opinion regarding any other federal tax consequences arising with respect to the loan transaction pursuant to the Loan Agreement.

It is to be understood that the terms of the Loan Agreement are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

EXHIBIT G

Form of Compliance Certificate of Borrower

The undersigned hereby certifies that he/she is the duly authorized officer of Board of Trustees of the **BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD** (the "*Borrower*"), and that as such he/she is authorized to execute this certificate on behalf of the Borrower. With reference to the Loan Agreement dated as of October 16, 1996 (together with all amendments or supplements thereto being the "*Loan Agreement*") between the Borrower and **NATIONSBANK OF TEXAS, N.A.** (the "*Bank*"), the undersigned further certifies, represents and warrants as follows (each capitalized term used herein having the same meaning given to it in the Agreement unless otherwise specified)

(a) The representations and warranties of the Borrower contained in the Loan Agreement and otherwise made in writing by or on behalf of the Borrower pursuant to the Loan Agreement were true and correct when made, and are repeated at and as of the time of delivery hereof and are true and correct at and as of the time of delivery hereof

(b) The Borrower has performed and complied with all agreements and conditions contained in the Loan Agreement required to be performed or complied with by it prior to or at the time of delivery hereof

(c) The Borrower has not incurred any material liabilities, direct or contingent, since October 16, 1996, except the obligations under the Note and except those consented to by the Bank in writing.

(d) Since October 16, 1996, no change has occurred, either in any case or in the aggregate, in the condition, financial or otherwise, of the Borrower which would have a Material Adverse Effect, except as follows: [LIST ANY CHANGE HAVING A MATERIAL ADVERSE EFFECT]

(e) There exists, and, after giving effect to the loan or loans with respect to which this certificate is being delivered, will exist, no Default under the Loan Agreement or any event or circumstance which constitutes, or with notice or lapse of time (or both) would constitute, an event of default under any loan or credit agreement, indenture, deed of trust, security agreement or other agreement or instrument evidencing or pertaining to any Debt of the Borrower, or under any material agreement or instrument to which the Borrower is a party or by which the Borrower is bound

EXECUTED AND DELIVERED [date of Compliance Certificate]

**BROWNSVILLE & RIO GRANDE INTERNATIONAL
RAILROAD**

By: _____

Name: _____

Title: _____

EXHIBIT H

Form of Financing Statement

November 6, 1996

Surface Transportation Board
12th and Constitution Avenue, N W
Washington, D C 20423

Attention Railroad Documentation

Gentlemen

Pursuant to the provision of Section 1116 4 of Chapter X of the Regulations of the Surface Transportation Board (formerly known as the Interstate Commerce Commission), the following letter is hereby submitted

The names and address of the parties to the transaction are as follows

Mortgagor (Debtor)	Brownsville & Rio Grande International Railroad P O Box 3818 Brownsville, Texas 78523-3818
--------------------	--

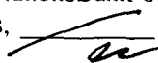
Mortgagee (Secured Party)	NationsBank of Texas, National Association 222 East Van Buren Harlingen, Texas 78578
---------------------------	--

Guarantor	None
-----------	------

A general description of the railroad equipment is attached hereto as Exhibit "A"

The owner of the aforementioned railroad equipment is Brownsville & Rio Grande International Railroad.

Enclosed are three executed counterparts of the Security Agreement and Mortgage as required by ICC Rules and a check for \$22 00 to cover the filing fees

The original document should be returned to NationsBank of Texas, National Association, 222 East Van Buren, Harlingen, Texas 78578, Attention Greg Marks, 

Please call the undersigned collect if you have any questions regarding this matter

Very truly yours,

BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD

By 

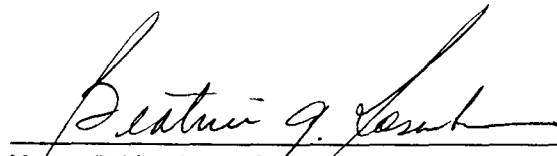
John Champion, Chairman of the Board of Trustees

STATE OF TEXAS

COUNTY OF Cameron

On this 7th day of November, 1996, before me personally appeared JOHN CHAMPION to me personally known, who being by me duly sworn, says that he is the Chairman of the Board of Trustees of Brownsville & Rio Grande International Railroad, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association

(SEAL)



Notary Public, State of Texas

My commission expires _____

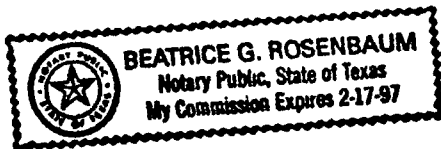


EXHIBIT "A"

Three (3) rail locomotives with 1200 horsepower engines bearing the following numbers

BRG 1145

BRG 1130

BRG 237